

1 Mark H. Gunderson, Esq. (SBN: 2134)  
2 Catherine A. Reichenberg, Esq. (SBN: 10362)  
3 GUNDERSON LAW FIRM  
4 3895 Warren Way  
5 Reno, Nevada 89509  
6 Telephone: (775) 829-1222  
7 Facsimile: (775) 829-1226

5 Randall J. Sunshine, Esq. (SBN: CA 137363)  
6 Ellyn S. Garofalo, Esq. (SBN: CA 158795)  
7 LINER GRODE STEIN YANKELEVITZ  
8 SUNSHINE REGENSTREIF & TAYLOR LLP  
9 1100 Glendon Avenue, 14th Floor  
10 Los Angeles, California 90024-3503  
11 Telephone: (310) 500-3500  
12 Facsimile: (310) 500-3501  
13 ADMITTED PRO HAC VICE

10 Attorneys for  
11 DENNIS MONTGOMERY, the MONTGOMERY FAMILY  
TRUST, EDRA BLIXSETH and OPSPRING LLC

**UNITED STATES DISTRICT COURT**

## DISTRICT OF NEVADA

15 DENNIS MONTGOMERY and the ) Case No. 3:06-CV-00056-PMP-VPC  
16 MONTGOMERY FAMILY TRUST, )  
17 Plaintiffs, )  
18 vs. )  
19 ETREPID TECHNOLOGIES, LLC, WARREN )  
20 TREPP, and the UNITED STATES )  
21 DEPARTMENT OF DEFENSE, )  
22 Defendants. )  
23 AND RELATED CASES. )  
\_\_\_\_\_  
) STIPULATED PROTECTIVE ORDER

1       On December 16, 2008, the Court entered judgment in favor of interested party Michael  
 2 Flynn (“Mr. Flynn”) against Dennis Montgomery, Brenda Montgomery and the Montgomery  
 3 Family Trust (collectively, the “Judgment Debtors”) in the amount of \$628,812.15 (the  
 4 “Judgment”). On February 25, 2009, the Court entered an order permitting Mr. Flynn to conduct  
 5 judgment debtor exams of the Judgment Debtors and directing the Judgment Debtors to produce  
 6 five categories of documents (Docket # 968) (the “Order”). In order to provide for the  
 7 confidentiality of any financial, proprietary or other confidential information disclosed in such  
 8 discovery, to limit its dissemination and use to and by Parties to the Judgment, and to insure  
 9 compliance with the United States protective order, Mr. Flynn and the Judgment Debtor  
 10 (collectively, the “Parties”), hereby submit the following Stipulated Protective Order which shall  
 11 govern any document, information or other thing furnished by any Party in connection with the  
 12 Order and/or any further order by the Court relating to post judgment discovery or proceedings.

13 **1. Proceedings and Information Governed.**

14       This Order shall govern any documents, information or other thing furnished by either  
 15 Party, including a Party’s representatives, in connection with the Order and any further order by the  
 16 Court for discovery in these post judgment proceedings. The information so governed includes, but  
 17 is not limited to, responses to requests to produce documents or other things, deposition testimony  
 18 and exhibits, all copies, extracts, summaries, compilations, designations and portions thereof and  
 19 any other discovery permitted by the Court. The Order does not govern proceedings before the  
 20 Court nor does it prohibit any party from seeking a protective order to govern proceedings before  
 21 the Court.

22 **2. Designation of Information for Protection Under This Order.**

23       (a)     All financial documents and information produced by any Party in these post  
 24 judgment proceedings shall be deemed “Confidential - Attorneys’ Eyes Only”, whether or not  
 25 expressly designated as such by the Party furnishing the information. Any other information  
 26 produced in this post-judgment proceeding that is reasonably believed by the producing party to be  
 27 nonpublic, proprietary or confidential may be designated by the producing party as “Confidential  
 28 Information” or “Confidential - Attorneys’ Eyes Only.” Such designation may be made by

1 stamping or otherwise marking the material prior to production as follows: "Confidential  
 2 Information" or "Confidential - Attorneys' Eyes Only." In the case of written material, documents  
 3 or tangible items, the designation "Confidential Information" or "Confidential - Attorneys' Eyes  
 4 Only" shall be made by the producing party at the time the receiving party is provided a copy of the  
 5 writing or thing. For multiple page documents, the designation "Confidential Information" or  
 6 "Confidential - Attorneys' Eyes Only," shall be made on the first page of the documents, but shall  
 7 apply to all pages of such documents unless expressly provided otherwise by the producing party.  
 8 In the case of deposition testimony, a party seeking to invoke the protection of this order as to  
 9 "Confidential" or "Confidential - Attorneys' Eyes Only" information shall give prompt notice  
 10 thereof at the initiation, conclusion, termination, or suspension of said deposition of testimony or  
 11 portion of testimony that is designated as "Confidential" or "Confidential - Attorneys' Eyes Only".  
 12 In the event such notice is given, the provisions of paragraphs 3, 4 and 5 below shall apply.

13       (b) Where it is determined that "Confidential Information" or "Confidential - Attorneys'  
 14 Eyes Only" information has been produced, but not initially designated as such, the "Confidential  
 15 Information" or "Confidential - Attorneys' Eyes Only" information can be designated as such in  
 16 writing at a later date, each party shall make a reasonable effort to retrieve documents containing  
 17 the later designated "Confidential Information" or "Confidential - Attorneys' Eyes Only"  
 18 information and otherwise insure that persons to whom the "Confidential Information" or  
 19 "Confidential - Attorneys' Eyes Only" information has been disclosed will treat such documents  
 20 accordingly.

21 **3. Disclosure of "Confidential - Attorneys' Eyes Only" Information.**

22       Confidential - Attorneys' Eyes Only information shall not be disclosed to any Party or third  
 23 party without prior Court approval, except as required pursuant to the U.S. Protective Order. The  
 24 Party seeking Court approval for the use or disclosure of Confidential - Attorneys' Eyes Only  
 25 Information, shall file a noticed motion with the Court, under seal, identifying the documents or  
 26 information to be disclosed and the person or persons to whom the Confidential - Attorneys' Eyes  
 27 Only information is to be disclosed and specifying the need for the disclosure or use of the  
 28 Confidential - Attorneys' Eyes Only information. The Court shall then determine whether

1 disclosure of the Confidential - Attorneys' Eyes Only Information is warranted. Any hearing  
 2 which refers to or described Confidential - Attorneys' Eyes Only information may at the Court's  
 3 discretion, be held in camera.

4 **4. Disclosure of Confidential Information.**

5 Information that is designated "Confidential Information" (but which is not marked  
 6 "Confidential - Attorneys' Eyes Only") may be disclosed by the receiving Party only to:

7 (a) The attorneys of record in this proceeding, each Party's in-house counsel, and any  
 8 attorneys retained by the Parties in this action to consult on the action, and their respective  
 9 associates, clerks, legal assistants, stenographic and support personnel, and organizations retained  
 10 by such attorneys to provide support services in this action and the employees of said  
 11 organizations;

12 (b) Independent experts and consultants retained in this proceeding and the employees  
 13 of such experts and consultants who are assisting them;

14 (c) The officers, directors and employees of a Party;

15 (d) Persons who were the authors or recipients of such documents; and

16 (e) Such other persons as hereafter may be designated by written agreement of all  
 17 Parties in this action or by order of the Court, obtained on noticed motion (or on shortened time as  
 18 the Court may allow), permitting such disclosure;

19 (f) Persons deposed pursuant to further orders of this Court; and

20 (g) Government personnel pursuant to the U.S. Protective Order.

21 **5. Distribution of Confidential Information.**

22 Unless otherwise approved by the parties in writing, no copies, summaries or abstracts of  
 23 Confidential Information shall be made by parties or their counsel for distribution or for use by  
 24 persons other than those designated in paragraph 4.

25 **6. Undertaking.**

26 (a) Each person referred to in paragraph 4 hereof to whom Confidential Information is  
 27 to be given, shown, disclosed, made available or communicated in any way, except the Parties  
 28 themselves, their respective attorneys of record, and government personnel pursuant to the U.S.

1 Protective Order, shall first execute an undertaking, in the form attached hereto as Exhibit A,  
 2 agreeing to be bound by the terms of this Order, and the original undertaking shall be retained by  
 3 counsel for the party so sharing the Confidential Information.

4           (b)     Each person to whom the Court may authorize the disclosure of Confidential -  
 5 "Attorneys' Eyes Only" information shall first execute an undertaking, in the form attached hereto  
 6 as Exhibit A, agreeing to be bound by the terms of this Order, and the original undertaking shall be  
 7 retained by counsel for the party so sharing the Confidential Information.

8       **7. Use.**

9           Information protected under this Order, whether designated "Confidential Information" or  
 10 "Confidential - Attorneys' Eyes Only", shall be used by the Party and any other persons as  
 11 authorized herein to whom it is disclosed solely in connection with this proceeding. Confidential  
 12 Information or "Confidential - Attorneys' Eyes Only" information shall not be used by such Party  
 13 or any other persons as authorized herein for any business or other purpose, unless agreed to in  
 14 writing by all parties to this action or as authorized by further order of the Court. No person who is  
 15 furnished information protected under this Order shall disclose it to any person not entitled under  
 16 this Order to receive it.

17       **8. Party's Own Information.**

18           The restrictions on the use of Confidential Information and Confidential - Attorneys' Eyes  
 19 Only information established by this Protective Order are applicable only to the use by a Party of  
 20 information received from the other Party. A Party is free to do whatever it desires with its own  
 21 Confidential Information or Confidential - Attorneys' Eyes Only information.

22       **9. Removal of Designation.**

23           A Party may seek removal of the designation of Confidential Information or "Confidential -  
 24 Attorneys' Eyes Only" of any document or information through the following procedures:

25           (a)     The Party or person seeking such removal shall give counsel of record for the other  
 26 Party written notice thereof, supported by reasons therefore specifying the documents, information  
 27 or other thing as to which such removal is sought;

1                             (b)     If the Parties cannot reach agreement concerning the matter within five (5) business  
 2 days after delivery by e-mail of the notice, or such other time as the Court may allow, then the  
 3 Party seeking the removal of Confidential Information from this Order may file and serve a motion  
 4 for an order of the Court for appropriate relief. Such motion must be filed and served by e-mail  
 5 within five (5) business days after the expiration of the five-day period referred to previously. Any  
 6 such motion shall be set for the earliest possible date on the Court's calendar, and shall not be  
 7 continued without the consent of all Parties. The Party seeking to remove the designation bears the  
 8 burden, in any such motion, to establish the appropriateness of the relief being sought.

9                             **10. Disclosure to Author or Addressee.**

10                         Nothing herein shall prohibit a Party, or its counsel, from disclosing a document which is  
 11 designated "Confidential Information" or Confidential - Attorneys' Eyes Only to the person who is  
 12 the author or recipient of such documents as shown on the face of the document.

13                         **11. Depositions.**

14                         Any deposition reporter who transcribes testimony in this action at a deposition shall be  
 15 given a copy of this Order and shall be required to agree on the transcript of the deposition, before  
 16 taking down any such testimony, that all testimony and information revealed at the deposition shall  
 17 not be disclosed by such reporter or any person who transcribed such testimony except to the  
 18 attorneys of record for the Parties in this action. In addition, all deposition testimony and exhibits  
 19 designated "Confidential - Attorneys' Eyes Only" shall be bound in a separate transcript, and  
 20 clearly marked on each page "Confidential - Attorneys' Eyes Only."

21                         **12. Exclusion From Deposition.**

22                         Whenever any documents, information or other things designated as "Confidential -  
 23 Attorneys' Eyes Only" are to be discussed or disclosed in a deposition, any party claiming such  
 24 confidentiality may exclude from the room any person who is not entitled to receive documents,  
 25 information or other things designated as "Confidential - Attorneys' Eyes Only."

26                         **13. Subpoenas.**

27                         In the event any person or Party having possession, custody or control of any Confidential  
 28 Information or Confidential - Attorneys' Eyes Only information receives a subpoena or other

1 process or order to produce such information, such person or Party shall promptly notify in writing  
 2 the attorneys of record of the Party claiming such confidential treatment of the item, documents or  
 3 information sought by such subpoena or other process or order, shall furnish those attorneys of  
 4 record with a copy of said subpoena or other process or order, and shall provide reasonable  
 5 cooperation with respect to any procedure to protect such information or matter as may be sought  
 6 to be pursued by the Party whose interests may be affected. If the Party asserting the  
 7 confidentiality makes a motion to quash or modify the subpoena, process or order, the person or  
 8 Party receiving the subpoena or other process or order shall comply with applicable law or order of  
 9 the court having jurisdiction over such subpoena, process, order, or motion. If no such motion is  
 10 made despite a reasonable opportunity to do so, the person or Party receiving the subpoena or other  
 11 process or order shall be entitled to comply with it provided it has fulfilled its obligations  
 12 hereunder.

13 **14. No Waiver.**

14 Neither the taking of nor the failure to take any action to enforce the provisions of this  
 15 Protective Order; nor the failure to object to any designation or any such action or omission, shall  
 16 constitute a waiver of any right to seek and obtain protection or relief, other than as specified  
 17 herein, of any claim or defense in this action or any other action including, but not limited to, the  
 18 claim or defense that any information is or is not proprietary to any Party, is or is not entitled to  
 19 particular protection or that such information embodies trade secrets of any party. The procedures  
 20 set forth herein shall not affect the rights of the Parties to object to discovery on grounds other than  
 21 those related to trade secrets or proprietary information claims, nor shall it relieve a party of the  
 22 necessity of proper response to discovery devices.

23 **15. No Probative Value.**

24 This Protective Order shall not abrogate or diminish any contractual, statutory or other legal  
 25 obligation or right of any Party or person with respect to any Confidential Information or  
 26 Confidential - Attorneys' Eyes Only information. The fact that information is designated  
 27 "Confidential Information" or "Confidential - Attorneys' Eyes Only" information under this  
 28 Protective Order shall not be deemed to be determinative of what a trier of fact may determine to

1 be confidential or proprietary. This Order shall be without prejudice to the right of any Party to  
 2 bring before the Court the question of: (i) whether any particular material is or is not confidential;  
 3 (ii) whether any particular information or material is or is not entitled to a greater or lesser degree  
 4 of protection than provided hereunder; or (iii) whether any particular information or material is or  
 5 is not relevant to any issue of this case, provided that in doing so the Party complies with the  
 6 foregoing procedures. Absent a stipulation of all Parties, the fact that information has been  
 7 designated confidential under this Order shall not be admissible during the trial of this action, nor  
 8 shall the jury be advised of such designation. The fact that any information is disclosed, used or  
 9 produced in discovery or trial herein shall not be construed in and of itself as admissible or offered  
 10 in any action or proceeding before any court, agency or tribunal as evidence of or concerning  
 11 whether or not such information is confidential or proprietary.

12 **16. Return of Information.**

13 At the conclusion of this proceeding, including all appeals, all Confidential Information or  
 14 “Confidential - Attorneys’ Eyes Only” information and all documents which reflect such  
 15 information shall, upon the request of the party furnishing such Confidential Information or  
 16 “Confidential - Attorneys’ Eyes Only” information, be (i) delivered to the Party that furnished such  
 17 Confidential Information or (ii) in lieu of delivery to the furnishing Party destroyed, in which event  
 18 counsel shall give written notice of such destruction to opposing counsel. In no event shall a party  
 19 retain a copy of Confidential Information or “Confidential - Attorneys’ Eyes Only” information  
 20 produced to it.

21 **17. Violations of the Order.**

22 Any Party who knowingly and intentionally violates this Protective Order by intentionally  
 23 disclosing or using “Confidential Information” or “Confidential –Attorneys’ Eyes Only”  
 24 information in such manner as to constitute a violation of this Order shall be subject to sanctions in  
 25 an amount to be decided in the sole discretion of the Court. Sanctions may be sought pursuant to a  
 26 noticed motion by the Party who furnished the Protected Information or on the Court’s own  
 27 motion, pursuant to the Court’s inherent power.

## **1 || 18. Court's Jurisdiction.**

The Court retains jurisdiction to make such amendments, modifications, deletions and additions to this Order as the Court may from time to time deem appropriate. The provisions of this Order regarding the use and/or disclosure of Protected Information shall survive the termination of this action, and the Court shall retain jurisdiction with respect to this Order.

## **6 | 19. Relationship to State Secrets.**

7 The United States Protective Order, entered by the Court on August 29, 2007 and  
8 upholding the government's assertion of military and states secret privilege regarding information  
9 as identified in said protective order, remains in effect. While it is not contemplated that financial  
10 information sought to be protected by the instant Protective Order directly involves military and  
11 states secrets information, to the extent that there is overlap of financial information and military  
12 and states secrets information, the United States Protective Order takes precedence over the terms  
13 of the instant Protective Order. Accordingly, no party is to disclose or produce information subject  
14 to the United States Protective Order in the handling or production of financial information as  
15 identified in the instant Protective Order.

16

17 SO ORDERED THIS 20th DAY OF March, 2009.

Valerie P. Cooke

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**United States Magistrate Judge Valerie P. Cooke**

## **UNDERTAKING**

## **Exhibit A to Stipulated Protective Order**

STATE OF )  
COUNTY OF ) ss.  
 )

I, \_\_\_\_\_, being first duly sworn, state that:

1. My address is \_\_\_\_\_.
2. My present employer is \_\_\_\_\_ and the address of my employer is \_\_\_\_\_.

3. My present occupation or job description is \_\_\_\_\_.

4. I have received a copy of the Protective Order in case of Montgomery, et al. v.

13 eTreppid, et al., Civil Action No. 3:06-cv-56 in the United States District Court for the District of  
14 Nevada.

15        5. I understand that I can be held in contempt of court for violating the terms of the  
16 Protective Order and I submit to the jurisdiction of this Court for purposes of enforcement of the  
17 Protective Order.

18       6. I have carefully read and understand the provisions of the Protective Order, and I  
19 will comply with all of its provisions.

21 || Dated: , 2009